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10/824,202	04/14/2004	Najem Yaqub	02662	5873
987	7590	11/03/2010		
SALTER & MICHAELSON THE HERITAGE BUILDING 321 SOUTH MAIN STREET PROVIDENCE, RI 029037128			EXAMINER KARPINSKI, LUKE E	
			ART UNIT	PAPER NUMBER
			1616	
			NOTIFICATION DATE	DELIVERY MODE
			11/03/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

10/824,202

Applicant(s)

Yaqub et al.

Examiner

LUKE E. KARPINSKI

Art Unit

1616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3.5-9, 17, 21, 24, 26, 29-34, 36-42 and 45-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3.5-9, 17, 21, 24, 26, 29-34, 36-42, 45-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/30/2010 has been entered.

Claims

Claims 2, 4, 10-16, 18-20, 22, 23, 25, 27, 28, 35, 43, and 44 are canceled.

Claims 45-47 are new.

Claims 1, 3, 5-9, 17, 21, 24, 26, 29-34, 36-42, and 45-47 are pending and under consideration in this action

Rejections

Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5-9, 17, 21, 24, 26, 29-34, 36-42, and 45-47. rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 9 recite that during manufacture the gel rigidity is unchanged, which reads on said composition in gel form during manufacture, and further recite that said composition is filled into a container prior to gel formation. The claims are unclear as to if said composition is a gel during processing or forms a gel after processing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Applicant Claims

2. Determining the scope and contents of the prior art.
3. Ascertaining the differences between the prior art and the claims at issue, and resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1, 3, 5-9, 17, 21, 24, 26, 29-34, 36, 37, and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,772,427 to Dawson et al. in view of US Patent No. 6,440,923 to Lyle et al.

Applicant Claims

Applicant claims a composition comprising an anionic surfactant, an amphoteric surfactant, a non-ionic gelling agent, and a post-foaming agent, an anionic surfactant to non-ionic gelling agent ratio of 4:1 or greater, the rigidity of said composition remaining unchanged for 4 minutes after addition of said post-foaming agent, specific compounds for said non-ionic gelling agent, including laureth-4, a percentage of said non-ionic

gelling agent present, and said composition being filled into a package from which the gel is dispensed, wherein the composition is filled into said package prior to the formation of said gel.

Applicant further claims said package as an aerosol can, a percentage of surfactants present, specific compounds and percentages for said post-foaming agent, a specific anionic surfactant, said anionic surfactant as 50% or greater of total surfactant percentage, a specific amphoteric surfactant, and a method of manufacture.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

Dawson et al. teach a post-foaming gel comprising an anionic and an amphoteric surfactant and a post-foaming agent, wherein the anionic surfactant to non-ionic gelling agent (ethoxylated fatty alcohol) ratio is 4:1 (abstract), said non-ionic gelling agent is present at 1-24%, which reads on 0.01-8% (col. 4, lines 49-54 and col. 10 examples 9 and 10 [Brij 30]), and the rigidity remaining unchanged for up to 24 hours, as well as said composition filled into packages prior to gel formation (col. 8, line 53 to col. 9, line 9) as claimed in claims 1 and 9. It is noted that ethoxylated fatty alcohol (4 lauryl alcohol) (col. 4, lines 49-65) reads non-ionic gelling agent (laureth-4), as 4-lauryl alcohol, laureth-4, and brij-30 are all synonyms.

Dawson et al. further teach lauryl alcohol (col. 4, lines 49-65) as claimed in claims 3 and 9, an aerosol can (col. 3, lines 29-31 and col. 9, lines 8-19), as claimed in claim 5, surfactants present from 3-23% and 4-26% (col. 4, lines 24-30), which reads on 0.01-30%, as pertaining to claims 6, 17, 45, and 47, said foaming agent as an aliphatic

hydrocarbon having 4-5 carbon atoms (abstract), as claimed in claims 7, 21, and 24, 5-20% foaming agent, which reads on 0.01-14%, as claimed in claims 8, 26, 29, and 30, sodium lauryl ether sulfate (col. 4, lines 22-30), as pertaining to claims 31 and 32, isopentane as a post foaming agent (col. 5, lines 20-26), as claimed in claims 33 and 34, and a method of manufacturing said compositions comprising combining a liquid base with a foaming agent (col. 3, lines 57-68 and col. 8, line 41 to col. 9, line 19), as pertaining to claim 9), and as low as 1% non-ionic gelling agent (col. 4, lines 49-65), as pertaining to claim 46.

***Ascertainment of the Difference between Scope the Prior Art and the Claims
(MPEP §2141.012)***

Dawson et al. do not teach an amphoteric surfactant, specifically cocamidopropyl betaine, as claimed in claims 1 and 37. This deficiency in Dawson et al. is cured by Lyle et al. Lyle et al. teach self-foaming compositions comprising anionic and amphoteric surfactants, including cocamidopropyl betaine, (col. 8, examples 1-3).

Further, Dawson et al. do not teach said anionic surfactant present at 50% or greater of the total amount of surfactant in said compositions as claimed in claim 36. This deficiency is cured by Lyle et al. Lyle et al. teach formulations wherein the anionic surfactant is present at 50% or greater of the total percentage of surfactant in said compositions (col. 8, examples 1-2).

Further, neither Dawson et al. nor Lyle et al. explicitly disclose said amphoteric surfactant present as low as 1.5% or 3%. However, Lyle et al. do teach the use of said

amphoteric surfactant as a co-surfactant, that anionic surfactants are especially preferred, and that the total percentage of surfactant can be 10% (col. 5, lines 11-25 and col. 7, lines 9-10).

Finding of Prima Facie Obviousness Rational and Motivation
(MPEP §2142-2143)

Regarding claims 1 and 37, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Dawson et al. with an amphoteric surfactant, specifically cocamidopropyl betaine as taught by Lyle et al. in order to produce the invention of instant claims 1 and 37.

One of ordinary skill in the art would have been motivated to do this because Lyle et al. teach similar foaming compositions which utilize amphoteric surfactants as well as anionic surfactants. Therefore it would have been obvious to utilize the cocamidopropyl betaine of Lyle et al., with the formulations of Dawson et al. in order to utilize a different surfactant system which is known for similar compositions.

Regarding claim 36, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Dawson et al. with anionic surfactant present at 50% or greater of the total amount of surfactant as taught by Lyle et al. in order to produce the invention of instant claim 36.

One of ordinary skill in the art would have been motivated to do this because Lyle et al. teach similar foaming compositions which utilize amphoteric surfactants and anionic surfactants at percentages which read on the claimed anionic percentage.

Therefore it would have been obvious to utilize the surfactant system of Lyle et al., with the formulations of Dawson et al. in order to utilize a different surfactant system which is known for similar compositions.

Regarding the types of containers listed in claim 1, Dawson et al. teach any type of container as useful, including several specific examples, which read on the claimed containers (col. 9, lines 8-20).

Regarding claims 45 and 47, Lyle et al. teach 10% surfactant, that anionic surfactants are preferred, and that an amphoteric co-surfactant may be used in said compositions, as well as provide an example wherein said amphoteric surfactant is present at 28% of said surfactant system (example 1). It would be reasonable to state that one of ordinary skill in the art, when using 10% surfactant system would see that 28% could be amphoteric which would result in 2.8%. One of ordinary skill would also be well aware that it is common in the art to modify common components to greater or lesser percentages by a reasonable amount in order to achieve a desired effect. Therefore the use of as low as 1.5% amphoteric surfactant in the compositions of Dawson et al. based on the teachings of Lyle et al. would have been obvious.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

2. Claims 1, 3, 5-9, 17, 21, 24, 26, 29-34, 36, 37, and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,440,923 to Lyle et al. in view of US Patent No. 4,772,427 to Dawson et al.

Applicant Claims

Applicant claims a composition comprising an anionic surfactant, an amphoteric surfactant, a non-ionic gelling agent, and a post-foaming agent, an anionic surfactant to non-ionic gelling agent ratio of 4:1 or greater, the rigidity of said composition remaining unchanged for 4 minutes after addition of said post-foaming agent, specific compounds for said non-ionic gelling agent, including laureth-4, a percentage of said non-ionic gelling agent present, and said composition being filled into a package from which the gel is dispensed, wherein the composition is filled into said package prior to the formation of said gel.

Applicant further claims said package as an aerosol can, a percentage of surfactants present, specific compounds and percentages for said post-foaming agent, a specific anionic surfactant, said anionic surfactant as 50% or greater of total surfactant percentage, a specific amphoteric surfactant, and a method of manufacture.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

Lyle et al. teach a self foaming cleansing composition comprising an anionic surfactant, an amphoteric surfactant, a post foaming agent (abstract), a non-ionic gelling agent present at 0.01-8% (lauryl alcohol, which is a synonym for laureth-4) (col. 4, lines

18-45 and col. 5, lines 7-10), and that said composition is filled into a container prior to gel formation (col. 3, lines 6-15) as claimed in claim 1.

Lyle et al. further teach a surfactant portion present from 10-30% (col. 7, lines 9-10) as claimed in claims 6 and 17, a aliphatic hydrocarbon foaming agent having 4-6 carbon atoms (col. 3, lines 49-55), as claimed in claims 7, 21, and 24, said foaming agent present from 0.01-14% (col. 3, lines 49-55), as claimed in claims 8, 26, and 29, said foaming agent as is pentane (col. 3, lines 49-55), as pertaining to claims 33 and 34, said anionic surfactant as sodium lauryl ether sulfate, hereafter referred to as SLS (col. 5, lines 26-67 and col. 8, lines 66-67), as pertaining to claims 31 and 32, said anionic surfactant present at 50% or greater of the total surfactant percentage (col. 8, examples 1-2), as claimed in claim 36, said amphoteric surfactant as cocamidopropyl betaine (col. 8, examples 1-3), as claimed in claim 37, and methods of manufacturing said compositions, including adding said foaming agent to said compositions and dispensing said complete compositions into containers prior to gelling (col. 2, lines 28-67), as pertaining to claim 9.

Lyle et al. also teaches problems associated with the manufacture of said compositions and solutions to said problems (col. 1, line 1 to col. 3, line 23).

The teachings of Dawson et al. are delineated above and incorporated herein.

***Ascertainment of the Difference between Scope the Prior Art and the Claims
(MPEP §2141.012)***

Lyle et al. do not teach an anionic surfactant to non-ionic gelling agent ratio of 4:1 or greater as claimed in claims 1 and 9. This deficiency in Lyle et al. is cured by Dawson et al. Dawson et al. teach a 4:1 ratio of said components (abstract).

Further, Lyle et al. do not teach said composition rigidity remaining unchanged for at least 4 minutes after the addition of the foaming agent as claimed in claims 1 and 9. This deficiency is cured by Dawson et al. Dawson et al. teach that formulations such as these may be optimized such that the gel formation does not occur for up to 24 hours (col. 8, line 64 to col. 9, lines 7).

Further, Lyle et al. do not teach an aerosol can as claimed in claim 5. This deficiency is cured by Dawson et al. Dawson et al. teach similar formulations packaged in aerosol cans (col. 3, lines 29-31 and col. 9, lines 8-19).

Further, neither Dawson et al. nor Lyle et al. explicitly disclose said amphoteric surfactant present as low as 1.5% or 3%. However, Lyle et al. do teach the use of said amphoteric surfactant as a co-surfactant, that anionic surfactants are especially preferred, and that the total percentage of surfactant can be 10% (col. 5, lines 11-25 and col. 7, lines 9-10).

Finding of Prima Facie Obviousness Rational and Motivation
(MPEP §2142-2143)

Regarding claims 1 and 9, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Lyle

et al. with an anionic surfactant to non-ionic gelling agent ratio of 4:1 or greater as taught by Dawson et al. in order to produce the invention of instant claims 1 and 9.

One of ordinary skill in the art would have been motivated to do this because Lyle et al. and Dawson et al. both teach to similar compositions; Lyle et al. teach the utilization and percentage ranges of both anionic surfactants and non-ionic gelling agents and Dawson et al. teach specific ratios of said components. Therefore it would have been obvious to utilize the component ratio of Dawson et al, with the formulations of Lyle et al. in order to utilize known ratios for said components.

Regarding claims 1 and 9, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Lyle et al., with an unchanged rigidity for at least 4 minutes after the addition of the foaming agent as taught by Dawson et al. in order to produce the invention of instant claims 1 and 9.

One of ordinary skill in the art would have been motivated to do this because Lyle et al. teach formation of a gel prior to said composition being dispensed into containers can cause problems and Dawson et al. teach that said formulations can be modified so that the gel forms anytime from immediately after addition of the foaming agent to 24 hours after said addition. Therefore it would have been obvious to utilize the modification teachings of Dawson et al., with the formulations of Lyle et al. in order to prevent gelling to occur until said compositions had been dispensed into containers.

Regarding claim 5, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to dispense the formulations of Lyle et al. into

aerosol cans as taught by Dawson et al. in order to produce the invention of instant claim 5.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. and Lyle et al. teach similar compositions and Dawson et al. teach that said compositions can be stored in many different containers, including aerosol containers. Therefore it would have been obvious to utilize the aerosol containers of Dawson et al, with the formulations of Lyle et al. in order to utilize a container which is known to work well with said formulations.

Regarding the types of containers listed in claim 1, Dawson et al. teach any type of container as useful, including several specific examples, which read on the claimed containers (col. 9, lines 8-20).

Regarding claims 45 and 47, Lyle et al. teach 10% surfactant, that anionic surfactants are preferred, and that an amphoteric co-surfactant may be used in said compositions, as well as provide an example wherein said amphoteric surfactant is present at 28% of said surfactant system (example 1). It would be reasonable to state that one of ordinary skill in the art, when using 10% surfactant system would see that 28% could be amphoteric which would result in 2.8%. One of ordinary skill would also be well aware that it is common in the art to modify common components to greater or lesser percentages by a reasonable amount in order to achieve a desired effect. Therefore the use of as low as 1.5% amphoteric surfactant in the compositions of Dawson et al. based on the teachings of Lyle et al. would have been obvious.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

3. Claims 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,772,427 to Dawson et al. in view of USPN 6,440,923 to Lyle et al., US Patent 4,651,503 to Anderson III et al., and US Patent 4,405,489 to Sisbarro

Applicant Claims

Applicant claims are delineated above and incorporated herein.

Applicant further claims that no elevated pressure of 80psi or greater is required to pipe said mixtures through pipe work.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

The teachings of Dawson et al. and Lyle et al. are delineated above and incorporated herein.

Ascertainment of the Difference between Scope the Prior Art and the Claims (MPEP §2141.012)

Dawson et al. do not teach a method wherein said un-gelled compositions are piped through pipe work without a pressure of 80psi or greater as claimed in claims 1-39. This deficiency in Dawson et al. is cured by Anderson et al. and Sisbarro. Anderson et al. teach packaging delayed forming gels and that said packaging may have problems due to high viscosity of said gel (col.1, lines15-61), and that said gel composition is mixed, in liquid form, in pipe work, added to a final container, and sealed prior to formation of said gel (col. 4, line 62 to col. 5, line 19, and claim 1). Further, Sisbarro teach that a pressure of 30-50psi is required to move low viscosity liquid gels through plant pipe work (col. 6, lines 6-27).

Finding of Prima Facie Obviousness Rational and Motivation
(MPEP §2142-2143)

Regarding the limitations to an elevated pressure, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to practice the methods of Anderson et al. with 30-50psi as taught by Sisbarro in order to produce the invention of instant claims 1-43.

One of ordinary skill in the art would have been motivated to do this because Anderson et al. teach a liquid formulation pumped through pipe work and Sisbarro teaches similar formulations, in low viscosity gel form, requiring 30-50psi to move said compositions through said pipe work. Therefore it would have been obvious to utilize 30-50psi as taught by Sisbarro, with the methods of Anderson et al. in order to utilize a pressure known to move low viscosity compositions through pipe work. It is noted by

the examiner that the partially gelled formulations of Sisbarro would have a higher viscosity than the liquid formulations of either Anderson et al. or Dawson et al. and therefore would require a higher pressure to move said compositions through pipe work that the later references formulations would require.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Double Patenting

Claims 1, 3, 5-9, 17, 21, 24, 26, 29, 31-34 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 and 11-34 of copending Application No. 10/824,203. Although the conflicting claims are not identical, they are not patentably distinct from each other because each application teaches the same methods of making the same compositions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Ascertainment of the Difference between Scope the Prior Art and the Claims (MPEP §2141.012)

Application '203 does not recite claims drawn to the compositions of the instant application, however, application '203 does teach methods of making said compositions so the compositions themselves are disclosed.

The instant application does not recite said compositions having a stability for at least 12 months at a specified temperature, however, both applications teach the same compositions and one cannot separate a composition and its properties, therefore the compositions of the instant application would necessarily remain stable for 12 months.

Finding of Prima Facie Obviousness Rational and Motivation

(MPEP §2142-2143)

The differences in the instant application and application '203 are in language only, the compositions and the methods of both applications are the same and either application would be seen as obvious over the other to one of ordinary skill in the art.

Response to Arguments

Applicant's arguments filed 8/30/2010 have been fully considered but they are not persuasive.

Applicant argues that Dawson et al. give no evidence or examples of how to delay said gelling or that such a composition had been produced.

This argument is not found persuasive because Dawson et al. is not required to provide examples for every embodiment, and Dawson et al. said foaming is affected by

the formulation itself, which one of ordinary skill in the art would understand to be modification of the components such as surfactant and post-foaming agent.

Applicant also argues that Dawson et al. do not teach how to delay gelling or to alter said gelling timeline.

This argument is not found persuasive because Dawson et al. teach adding said components and shaking to form said gel and one can clearly see that the delay comes from waiting to shake said composition. Further, it would be routine experimentation to alter the percentages of said components to determine to exact methods of delaying said gel formation and one of ordinary skill would likely determine said delay was based on the percentages of the components affecting said gel, including the surfactant and post-foaming agent. It is noted that applicant does not provide any discussion as to how to alter said delay and only provides a theory as to what affects said delay.

Applicant also argues that Dawson et al. do not teach an amphoteric surfactant and that said amphoteric surfactant in combination with a non-ionic gelling agent is 'theorized' to be responsible for said delayed gelling.

Applicant only theorizes that said combination is responsible for said delay and has provided no evidence nor have they show any criticality of said components or their percentages, especially with regard to the use of an amphoteric surfactant. Dawson et al. teach the same non-ionic gelling agent and the use of a surfactant system and that said compositions may affect gelling for up to 24 hours. It is common in the art to use different surfactants as well as surfactant systems and it would have been obvious to produce the Dawson et al. compositions with the amphoteric surfactants of Lyle. The

Dawson et al. and Lyle et al. combination renders the instant compositions obvious especially in light of the lack of a showing of criticality.

Applicant also argues that there is no motivation to combine the teachings of Dawson et al. and Lyle et al.

This argument is not found persuasive because both references teach post-foaming cleansing compositions. One desiring to produce such a composition would reasonably read both of said references and combine their teachings.

Applicant also argues that Lyle et al. addresses a different problem than that of the instant invention.

This argument is not found persuasive because Lyle et al. is not required to address the same problem to be solved in order to be used as prior art in order to render the claimed compositions as obvious. Further, Lyle et al. discusses and is aware of the problem of gel formation within pipe work.

Applicant also argues that the compositions of Lyle et al. gel quickly and one of skill would not consult said reference when formulating a delayed gelling composition.

This argument is not found persuasive because Dawson et al. teach said formulations may have a delayed gelling for up to 24 hours. Further, one would look to Lyle et al. for a teaching of common components and percentages thereof used in similar formulations.

Applicant also argues that none of Anderson, Sisbarro, or Hall, teach delayed gelling of at least 4 minutes.

This argument is not found persuasive because Dawson et al. is used to teach said delay in gel formation.

Applicant also argues that the key point to the instant invention is that said gel structure does not begin to form for a period of time during processing.

The examiner points out that applicant claims said 'gel rigidity' remains unchanged for at least 4 minutes 'during' manufacture, which reads on said gel formed during manufacture. Said gel maintaining rigidity does not read on a liquid, as gel is not a liquid.

Conclusion

Claims 1, 3, 5-9, 17, 21, 24, 26, 29-34, and 36-42, and 45-47 are rejected.

No claims are allowed.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUKE E. KARPINSKI whose telephone number is (571) 270-3501. The examiner can normally be reached on Monday Friday 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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